



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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October 16, 2000

David Cormier
24 Oak Street
Rochester, NH 03867

NOTICE OF DECISION
ADMINISTRATIVE FINE
NO. AF 2000-052 (WASTE
MANAGEMENT)

Re: Route 125 Quickie

Dear Mr. Cormier:

As you are aware, by Notice of Proposed Administrative Fine No. AF 2000-052 issued August 1, 2000, the Waste Management Division ("the Division") sought administrative fines totaling \$4,000 against you for alleged violations of Env-Wm 1401.32 and Env-Wm 1401.33, the state rules relating to the control of underground petroleum storage ("UST") facilities, arising from activities on property located at New England Auto Body Inc., 1316 Hooksett Road, Hooksett, NH ("the Facility"). Pursuant to RSA 146-C:10-a and based upon my review of the evidence presented at the hearing held on this matter on August 21, 2000, I have concluded that a fine of \$ 4,000 is appropriate as set forth below:

- A fine in the amount \$2,000 is imposed against you for failing to protect the existing steel USTs at the Facility from corrosion or to permanently close the steel USTs no later than December 22, 1998.
- A fine in the amount of \$2,000 is imposed against you for failing to protect the existing steel piping systems at the Facility that routinely contained a regulated substance and is in contact with the soil or other back fill material from corrosion no later than December 2, 1998.

The \$4,000 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer – State of NH" and sent to the attention of James Ballentine, DES Legal Unit, PO Box 95, Concord, NH 03302-0095.

The purpose of Env-Wm 1401 is to minimize water and soil contamination in New Hampshire due to improper storage and handling of petroleum products by establishing requirements, in part, for registering, permitting, installing, and operating underground storage facilities. To this end, Env-Wm 1401.32 requires existing steel UST systems to be protected from corrosion or to be permanently closed no later than December 22, 1998. Env-Wm 1401.33 requires existing metal piping to be protected from corrosion no later than December 22, 1998. You are liable for not protecting from corrosion or permanently closing the UST systems at the Facility in a timely manner to prevent the potential contamination of New Hampshire's land and water.

This decision is based on the following findings and conclusions:

- 1 David Cormier, Sr. ("Cormier") is the owner of two underground storage tank ("UST") systems located at Route 125 Quickie, 105 Main Street, Gonic, NH ("the Facility") and identified as UST #0-110881.
- 1 RSA 146-C:2 prohibits the owner or operator of a UST facility from discharging oil from such facility into the land, groundwater, or surface water of New Hampshire.
- 3 Env-Wm 1401.32 requires existing USTs to be protected from corrosion or be permanently closed no later than December 22, 1998.
- 4 Env-Wm 1401.33 requires existing metal piping to be protected from corrosion no later than December 22, 1998.
- 6 By letter dated April 9, 1996, the DES informed Cormier that the USTs located at the Facility were required to be upgraded or permanently closed by December 22, 1998.
- 7 By postcard dated February 1997, the Division reminded Cormier that the USTs were to be closed by December 22, 1998.
- 8 By letter dated January 10, 1998, Cormier informed DES that he would remove the existing tanks and replace them with new conforming tanks by December 22, 1998 and that he required financial assistance for the removal.
- 9 By letter dated September 1998, DES again notified Cormier that the USTs must be upgraded or removed by December 22, 1998.
- 10 By letter dated January 6, 1999, DES requested that Cormier contact DES by January 22, 1999 with documentation that the USTs were in compliance.
- 1 By telephone on January 22, 1999, Cormier informed DES that he intended to temporarily close the tanks.
- 12 By letter dated July 22, 1999, DES informed Cormier that because the USTs were placed in temporary closure after December 22, 1998, that they had to be permanently closed by December 21, 1999.
- 13 By letter dated November 5, 1999, DES reminded Cormier that the USTs must be permanently closed by December 22, 1999.
- 14 By letter dated January 10, 2000, DES requested that Cormier notify staff by January 22

2000 as to whether the USTs had been permanently closed

- 15 By letter dated February 7, 2000, DES informed Cormier that it would enter the Facility to perform remedial measures unless he notified DES within 10 days that he would conduct the remediation.
- 16 By telephone on February 18, 2000, Cormier informed DES that he would be removing the USTs shortly.
- 7 By telephone on April 6, 2000, Cormier informed DES that he would remove the tanks by the end of the month.
- 18 By letter dated May 31, 2000, DES sent a proposed Administrative Order by Consent ("AOC") to Cormier in which Cormier would agree to permanently close the USTs by July 17, 2000. Cormier did not return the AOC.
- 19 By telephone on August 28 and September 20, 2000, Cormier informed DES that Munce would be removing the tanks as soon as he (Cormier) received a loan for the removal.
- 20 The UST systems at the Facility are steel and do not have corrosion protection
- 2 The UST systems at the Facility have not been permanently closed
- 22 Cormier violated Env-Wm 1401.32 by failing to protect the existing steel USTs at the Facility from corrosion or to permanently close the USTs no later than December 22, 1998.
- 23 For a violation of Env-Wm 1401.32, Env-C 607.03(e) authorizes a fine of \$1,000 per violation for a total fine of \$2,000.
- 24 Cormier violated Env-Wm 1401.33 by failing to protect the existing steel piping systems at the Facility that routinely contained a regulated substance and are in contact with the soil or other back fill material from corrosion no later than December 22, 1998.
- 25 For a violation of Env-Wm 1401.33, Env-C 607.03(f) authorizes a fine of \$1,000 per violation for a total fine of \$2,000.
- 26 None of the factors identified in Env-C 601.09(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violations noted in #22 and #24 above.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

Very truly yours,

 **COPY**

Robert W. Varney
Commissioner

Enclosure

cc: Philip J. O'Brien, Ph.D., Director, Waste Management Division
Gretchen C. Rule, Esq., DES Enforcement Coordinator
Lynn A. Woodard, DES WMD
Thomas Beaulieu, DES WMD
Susan Weiss Alexant, Esq., DES Hearings and Rules Attorney